

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
JAMUL INDIAN VILLAGE DEVELOPMENT)
CORPORATION)
)
Station WQXU512, Jamul, California)

ORDER PROPOSING MODIFICATION

Adopted: June 12, 2017

Released: June 13, 2017

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a request from Mark J. Abrams (Abrams), licensee of Station WQXT922, Poway, California, seeking modification of the license of Jamul Indian Village Development Corporation (JIVD) for Station WQXU512, Jamul, California.¹ Based upon our review and analysis of the information before us, we propose to modify JIVD's license for Station WQXU512 to delete the authorization for frequency pairs 898/937.2250 MHz, 898/937.2375 MHz, and 898/937.2500 MHz.

2. *Background.* The general required minimum separation between co-channel stations in the 900 MHz band is 113 kilometers (70 miles).² An applicant's proposed station may be closer than that to another station by meeting certain power and antenna height combinations provided in the "Short-Spacing Separation Table" included in section 90.621(b)(4),³ but co-channel systems may be separated by less than 88 kilometers (55 miles) only if the applicant obtains a letter of consent from each short-spaced co-channel licensee.⁴

3. On June 8, 2016, Abrams was granted a license for Station WQXT922, authorizing base station operations at Poway, California, and mobile operations within a 32-kilometer radius of a nearby point on six 900 MHz band frequency pairs, including 898/937.2250 MHz, 898/937.2375 MHz, and 898/937.2500 MHz, with 100 mobile units authorized on each channel.

4. On the same day, the Wireless Infrastructure Association (WIA) (formerly known as the Personal Communications Industry Association), an FCC-certified frequency coordinator, submitted an application⁵ on behalf of JIVD for base-mobile operations on six 900 MHz band frequency pairs, including 898/937.2250 MHz, 898/937.2375 MHz, and 898/937.2500 MHz, with 501 mobile units authorized on each channel. JIVD's proposed base station was at Jamul, California, approximately 35

¹ Petition for Reconsideration, or Alternatively, Request for Modification of License Pursuant to Section 316 of the Act (filed Aug. 16, 2016) (Request); *see also* Erratum/Supplement to Petition for Reconsideration, or Alternatively, Request for Modification of License Pursuant to Section 316 of the Act (filed Aug. 17, 2016).

² 47 CFR § 90.621(b).

³ *See* 47 CFR § 90.621(b)(4).

⁴ 47 CFR § 90.621(b)(5).

⁵ FCC No. 0007297986.

kilometers (22 miles) from the site of Abrams's authorized base station at Poway. Based upon WIA's coordination, JIVD received an authorization to operate Station WQXU512 on June 13, 2016.

5. Abrams states that he did not consent to the JIVD application, and did not learn of it until on or about Monday, August 8, 2016.⁶ He states that he had his frequency coordinator approach WIA to remedy the situation, but WIA on Thursday, August 11, 2016, declined to take any action.⁷ On August 12, 2016, JIVD reported that its base station had been put into operation on August 8, 2016, and its mobile units were put into operation on August 11, 2016.⁸

6. On Tuesday, August 16, 2016, Abrams filed his request that JIVD's license for Station WQXU512 be modified to remove the authorization for frequency pairs 898/937.2250 MHz, 898/937.2375 MHz, and 898/937.2500 MHz. He argues that the frequency coordination of JIVD's application was in error, and the application should not have been filed.⁹ He also asserts that JIVD's station will cause harmful interference to his operations, and the existence of JIVD's co-channel station will impede any efforts to modify his license.¹⁰

7. *Discussion.* Based upon the record before us, we conclude that the JIVD application should not have been coordinated or granted. In this connection, we note that Abrams's application was filed on March 21, 2016, before JIVD filed its application on June 8, 2016. JIVD's Jamul site is within 88 kilometers of Abram's Poway site. As a result, we conclude that WIA's coordination of JIVD's application for co-channel operations was defective.

8. We believe that section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.¹¹ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹² Because the coordination and eventual grant of JIVD's application were defective, we believe that a modification of the JIVD license to remove frequency pairs 898/937.2250 MHz, 898/937.2375 MHz, and 898/937.2500 MHz will promote the public interest, convenience, and necessity by affording Abrams's co-channel Station WQXT922 the exclusivity to which it is entitled under the Commission's rules, while leaving JIVD with operational channels.

9. In accordance with section 1.87(a) of the Commission's rules,¹³ we will not issue a modification order until JIVD has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, JIVD must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325,

⁶ See Request at 6.

⁷ *Id.* at 7.

⁸ See FCC File No. 0007375519.

⁹ See Request at 5-7.

¹⁰ See *id.* at 3.

¹¹ See 47 U.S.C. § 316(a)(1).

¹² *Id.* Our authority to modify licenses under Section 316 is not limited in time or to the correction of post-licensing events. See, e.g., *National Science and Technology Network, Inc.*, Order on Reconsideration, 21 FCC Rcd 9050, 9053, para. 14 (WTB PSCID 2006) (citing *California Metro Mobile Communications, Inc. v. FCC*, 365 F.2d 38, 45 (D.C. Cir. 2004)).

¹³ See 47 CFR § 1.87(a).

Washington, D.C. 20554, Attn: Rodney Conway.¹⁴ If no protest is filed, JIVD will have waived its right to protest the modification and will be deemed to have consented to the modification.

10. *Conclusion.* For the reasons stated above, we conclude that the underlying frequency coordination and subsequent grant of JIVD's license for Station WQXU512 was defective. Accordingly, we propose to modify this license removing the authorization for operations at Jamul, California, on frequency pairs 898/937.2250 MHz, 898/937.2375 MHz, and 898/937.2500 MHz.

11. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration, or Alternatively, Request for Modification of License Pursuant to Section 316 of the Act filed by Mark J. Abrams on August 16, 2016, IS GRANTED to the extent set forth herein.

12. IT IS PROPOSED that, pursuant to sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and section 1.87 of the Commission's rules, 47 CFR § 1.87, the license for Private Land Mobile Radio Service Station WQXU512 BE MODIFIED to delete frequency pairs 898/937.2250 MHz, 898/937.2375 MHz, and 898/937.2500 MHz at locations 1 and 2.

13. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.87(i) of the Commission's rules, 47 CFR § 1.87(i), that this *Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested, to Jamul Indian Village Development Corporation, 14191 Highway 94, Jamul, CA 91935, Attn: IT Director.

14. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁴ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743.